

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 JENNIFER CHRISTINE WHITNEY
P.O. Box 1253
14 Quechee, VT 05059

15 Respondent.

Case No. 2005-01-0043

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

16
17 FINDINGS OF FACT

18 1. On or about October 23, 2007, Complainant Ruth Ann Terry, M.P.H, R.N,
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, filed
20 Accusation No. 2005-01-0043 against Respondent Jennifer Christine Whitney before the Board
21 of Registered Nursing.

22 2. On or about June 21, 2002 the Board issued Registered Nurse License No.
23 600850 to Respondent. The license expired on August 31, 2007, and has not been renewed.

24 3. On or about November 5, 2007, Jennifer Familo, an employee of the
25 Department of Justice, served by Certified Mail a copy of the Accusation No. 2005-01-0043,
26 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
27 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

28 ///

1 was and is P.O. Box 1253, Quechee, VT 05059. A copy of the Accusation is attached as exhibit
2 A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about November 13, 2007, the signed certified mail tag was returned
6 indicating the documents had been received by Respondent.

7 6. Government Code section 11506 states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts of
10 the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
grant a hearing.

11 7. Respondent failed to file a Notice of Defense within 15 days after service
12 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
13 Accusation No. 2005-01-0043.

14 8. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions or
17 upon other evidence and affidavits may be used as evidence without any notice to
respondent.

18 9. Pursuant to its authority under Government Code section 11520, the Board
19 finds Respondent is in default. The Board will take action without further hearing and, based on
20 Respondent's express admissions by way of default and finds that the allegations in Accusation
21 No. 2005-01-0043 are true.

22 10. The total costs for investigation and enforcement are \$1,558.50 as of
23 March 28, 2008.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent has subjected her
26 Registered Nurse License No. 600850 to discipline.

27 ///

28 ///

1 2. The agency has jurisdiction to adjudicate this case by default.

2 3. The Board is authorized to revoke Respondent's Registered Nurse License
3 based upon the following violations alleged in the Accusation:

4 a. Between January 19, 2004 and February 10, 2004, and while employed as
5 a registered nurse at Scripps Hospital, La Jolla, California, Respondent obtained controlled
6 substances for alleged patient administration, without a physician's order, and she failed to
7 document administration of, or wastage of, those controlled substances, with respect to fifteen
8 (15) different patients.

9 b. Respondent's license is subject to discipline for unprofessional
10 conduct under Code section 2761, subdivision (a) and 2762, subdivision (a), in that she obtained
11 controlled substances/dangerous drugs by fraud, deceit, misrepresentation, or subterfuge, or by
12 the concealment of material facts, in violation of Health and Safety Code section 11173,
13 subdivision (a).

14 c. Respondent's license is subject to discipline for unprofessional conduct
15 under Code section 2761, subdivision (a) and 2762, subdivision (a), in that she possessed
16 controlled substances and/or dangerous drugs in violation of Code section 4060; on or about
17 August 4, 2004, she possessed Propoxyphene (Darvocet), a controlled substance/dangerous drug,
18 in violation of Code section 4060; and on or about October 4, 2004, she possessed
19 Benzodiazepines (Xanax), a controlled substance/dangerous drug, in violation of Code section
20 4060.

21 d. Respondent's license is subject to discipline for unprofessional conduct
22 under Code section 2761, subdivision (a) and 2762, subdivision (a), in that on or about August 4,
23 2004, she self-administered Propoxyphene (Darvocet), a controlled substance/dangerous drug,
24 without the direction of a licensed physician, surgeon, dentist, or podiatrist; and on or about
25 October 4, 2004, she self-administered Benzodiazepines (Xanax), a controlled
26 substance/dangerous drug, without the direction of a licensed physician, surgeon, dentist, or
27 podiatrist.

28 ///

1 ORDER

2 IT IS SO ORDERED that Registered Nurse License No. 600850, heretofore
3 issued to Respondent, Jennifer Christine Whitney, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on July 7, 2008.

10 It is so ORDERED June 6, 2008

11
12 *LaTranene W Tate*

13
14 FOR THE BOARD OF REGISTERED NURSING

Exhibit A

Accusation No. 2005-01-0043

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2078
Facsimile: (619) 645-2061

8 Attorneys for Complainant
9

10
11 **BEFORE THE**
BOARD OF REGISTERED NURSING
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2008-140

14 **JENNIFER CHRISTINE WHITNEY**

ACCUSATION

15 P. O. Box 1253
Quechee, VT 05059

16 **Registered Nurse License No. 600850,**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. **Registered Nurse License.** On or about June 21, 2002, the Board
25 of Registered Nursing ("Board") issued Registered Nurse License Number 600850 to Jennifer
26 Christine Whitney ("Respondent"). The license expired on August 31, 2007, and has not been
27 renewed.

28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 4. Section 2750 of the Business and Professions Code ("Code") provides:

6 Every certificate holder or licensee, including licensees holding temporary
7 licenses, or licensees holding licenses placed in an inactive status, may be
8 disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus.
9 & Prof. Code, § 2700 et seq.)]. As used in this article, 'license' includes
10 certificate, registration, or any other authorization to engage in practice regulated
11 by this chapter. The proceedings under this article shall be conducted in
12 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
13 Division 3 of Title 2 of the Government Code [the Administrative Procedure Act],
14 and the board shall have all the powers granted therein.

15 5. Code section 2764 provides:

16 The lapsing or suspension of a license by operation of law or by order or
17 decision of the board or a court of law, or the voluntary surrender of a license by a
18 licensee shall not deprive the board of jurisdiction to proceed with any
19 investigation of or action or disciplinary proceeding against such license, or to
20 render a decision suspending or revoking such license.

21 **STATUTORY PROVISIONS**

22 6. Code section 2761 states:

23 The board may take disciplinary action against a certified or licensed nurse
24 or deny an application for a certificate or license for any of the following:

25 (a) Unprofessional conduct

26

27 (d) Violating or attempting to violate, directly or indirectly, or
28 assisting in or abetting the violating of, or conspiring to violate any provision or
term of this chapter or regulations adopted pursuant to it.

. . . .

7. Code section 2762 provides, in pertinent part:

In addition to other acts constituting unprofessional conduct within the
meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as

1 defined in Division 10 (commencing with Section 11000) of the Health and Safety
2 Code or any dangerous drug or dangerous device as defined in Section 4022.

3

4 (e) Falsify, or make grossly incorrect, grossly
5 inconsistent, or unintelligible entries in any hospital, patient, or
6 other record pertaining to the substances described in subdivision
7 (a) of this section.

8 8. Code section 2770.11 provides, in pertinent part:

9 (a) Each registered nurse who requests participation in a diversion
10 program shall agree to cooperate with the rehabilitation program designed by a
11 committee. Any failure to comply with the provisions of a rehabilitation program
12 may result in termination of the registered nurse's participation in a program. The
13 name and license number of a registered nurse who is terminated for any reason,
14 other than successful completion, shall be reported to the board's enforcement
15 program.

16 (b) If a committee determines that a registered nurse, who is
17 denied admission into the program or terminated from the program, presents a
18 threat to the public or his or her own health and safety, the committee shall report
19 the name and license number, along with a copy of all diversion records for that
20 registered nurse, to the board's enforcement program. The board may use any of
21 the records it receives under this subdivision in any disciplinary proceeding.

22 9. Code section 4022 provides:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe
24 for self-use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law
26 prohibits dispensing without prescription," "Rx only," or words of similar import.

27 (b) Any device that bears the statement: "Caution: federal law
28 restricts this device to sale by or on the order of a _____," "Rx only," or
words of similar import, the blank to be filled in with the designation of the
practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be
lawfully dispensed only on prescription or furnished pursuant to Section 4006.

10. Code section 4060 provides:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,

1 optometrist, veterinarian, naturopathic doctor, certified nurse- midwife, nurse
2 practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

3 11. Health and Safety Code section 11173, subdivision (a), provides:

4 (a) No person shall obtain or attempt to obtain controlled
5 substances, or procure or attempt to procure the administration of or prescription
6 for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
(2) by the concealment of a material fact.

7

8 12. Code section 125.3 provides that the Board may request the administrative
9 law judge to direct a licentiate found to have committed a violation or violations of the licensing
10 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
11 the case.

12 DRUGS

13 13. "Benzodiazepines" are Schedule IV controlled substances as designated in
14 Health and Safety Code section 11057, subdivision (d)(8), and dangerous drugs within the
15 meaning of Code section 4022.

16 14. "Darvocet" is a compound containing propoxyphene napsylate, and a
17 Schedule IV controlled substance as designated in Health and Safety Code section 11057,
18 subdivision (c)(2), and a dangerous drug within the meaning of Code section 4022.

19 15. "Demerol" is a brand of meperidine hydrochloride, a derivative of
20 pethidine, and a Schedule II controlled substance as designated in Health and Safety Code section
21 11055, subdivision (c)(17), and a dangerous drug within the meaning of Code section 4022.

22 16. "Diazepam" is a benzodiazepine derivative, and a Schedule IV controlled
23 substance as designated in Health and Safety Code section 11057, subdivision (d)(8), and a
24 dangerous drug within the meaning of Code section 4022.

25 17. "Dilaudid" is a brand of hydromorphone, and a Schedule II controlled
26 substance as designated in Health and Safety Code section 11055, subdivision (b)(1)(k), and a
27 dangerous drug within the meaning of Code section 4022.

28 ///

1 18. “Hydrocodone,” also known as dihydrocodeinone, is a Schedule III
2 controlled substance as designated in Health and Safety Code section 11056, subdivision (e)(4),
3 and a dangerous drug within the meaning of Code section 4022.

4 19. “Morphine” is a Schedule II controlled substance as designated in Health
5 and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug within the meaning
6 of Code section 4022.

7 20. “Norco” is a compound containing Hydrocodone bitartrate also known as
8 dihydrocodeinone, and is a Schedule III controlled substance as designated by Health and Safety
9 Code section 11056, subdivision (e)(4), and a dangerous drug within the meaning of Code
10 section 4022.

11 21. “Oxazepam” is a benzodiazepine derivative, and a Schedule IV controlled
12 substance as designated in Health and Safety Code section 11057, subdivision (d)(8), and a
13 dangerous drug within the meaning of Code section 4022.

14 22. “Propoxyphene Napsylate” is a Schedule IV controlled substance as
15 designated in Health and Safety Code section 11057, subdivision (c)(2), and a dangerous drug
16 within the meaning of Code section 4022.

17 23. “Xanax “ is a brand of Alprazolam, and a Schedule IV controlled
18 substance as designated in Health and Safety Code section 11057, subdivision (d)(1), and a
19 dangerous drug within the meaning of Code section 4022.

20 **Background**

21 24. **Scripps Memorial Hospital.** During January and February 2004,
22 Respondent was employed as a registered nurse at Scripps Memorial Hospital (Scripps),
23 located in La Jolla, California. During the period of January 19, 2004, through
24 February 10, 2004, Respondent obtained controlled substances for patient administration
25 without a physician’s order and she failed to document the administration or wastage of those
26 controlled substances. On or about February 24, 2004, Respondent’s employment with Scripps
27 was terminated.

28 ///

1 25. **The Board's Diversion Program.** On or about April 1, 2004,
2 Respondent was enrolled in the Board's Diversion Program.^{1/} She was terminated from diversion
3 on December 29, 2004, as a public safety threat, following her positive test results for
4 Propoxyphene (Darvocet) on August 4, 2004, and Benzodiazepines (Xanax) on October 4, 2004.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (False, Grossly Incorrect, Grossly Inconsistent Record Entries)

7 26. Respondent's license is subject to discipline for unprofessional conduct
8 under Code section 2762, subdivision (e), in that while employed as a registered nurse at Scripps
9 during the period of January 19, 2004, through February 10, 2004, Respondent made false,
10 grossly incorrect, or grossly inconsistent entries in hospital, patient, or other records pertaining
11 to controlled substances, as follows:

12 a. **Patient #1.** On or about January 19, 2004, at approximately 0942
13 hours, 1009 hours, 1339 hours, and 1647 hours, Respondent obtained a total dosage of 52 mgs
14 of Dilaudid for administration to Patient #1, which exceeded the physician ordered dosage of the
15 medication. Respondent recorded the administration of 32 mgs of the Dilaudid in the patient's
16 medication administration record, but she failed to account for 20 mgs of the Dilaudid in any
17 hospital, patient, or other record. At approximately 1747 hours, Respondent obtained a 10 mg
18 dose of Morphine for administration to Patient #1. Respondent inconsistently recorded that 40
19 mgs of Morphine had been administered to the patient.

20 b. **Patient #2.** On or about January 19, 2004, at approximately
21 0733 hours, 0946 hours, and 1258 hours, Respondent obtained 2 mgs of Dilaudid each time for
22 _____

23 1. Business and Professions Code section 2770 provides:

24 It is the intent of the Legislature that the Board of Registered Nursing
25 seek ways and means to identify and rehabilitate registered nurses whose
26 competency may be impaired due to abuse of alcohol and other drugs,
27 or due to mental illness so that registered nurses so afflicted may be
28 rehabilitated and returned to the practice of nursing in a manner which
 will not endanger the public health and safety. It is also the intent of the
 Legislature that the Board of Registered Nursing shall implement this
 legislation by establishing a diversion program as a voluntary alternative
 to traditional disciplinary actions. (Bus. & Prof. Code, § 2770.)

administration to Patient #2. Thereafter, Respondent failed to account for the 6 mgs of Dilaudid in any hospital, patient, or other record.

c. **Patient #3.** On or about January 19, 2004, at approximately 1840 hours, Respondent obtained a 25 mg dose of Demerol for administration to Patient #3. Respondent failed to account for the 25 mgs of the Demerol in any hospital, patient, or other record.

d. **Patient #4.** On or about January 21, 2004, at approximately 0858 hours, 1217 hours, and 1413 hours, Respondent obtained 2mgs of Dilaudid each time for administration to Patient #4. Respondent failed to account for the 6 mgs of Dilaudid in any hospital, patient, or other record.

e. **Patient #5.** On or about February 8, 2004, at approximately 1359 hours, Respondent obtained 50 mgs of Demerol for administration to Patient #5. Respondent failed to account for the 50 mgs of Demerol in any hospital, patient, or other record.

f. **Patient #6.** On or about February 8, 2004, at approximately 1341 hours Respondent obtained 4 mgs of Dilaudid for administration to Patient #6. Respondent failed to account for 4 mgs of the Dilaudid in any hospital, patient, or other record.

g. **Patient #7.** On or about February 8, 2004, at approximately 1603 hours and 1625 hours, Respondent obtained a total dosage of 6 mgs of Dilaudid for administration to Patient #7. Respondent failed to account for 4 mgs of the Dilaudid in any hospital, patient, or other record.

h. **Patient #8.** On or about February 8, 2004, at approximately 1459 hours, Respondent obtained 5 mgs of Morphine for administration to Patient #8. Respondent failed to account for the 5 mgs of Morphine in any hospital, patient, or other record.

i. **Patient #9.** On or about February 8, 2004, at approximately 0824 hours and 0949 hours, without a physician's order to do so, Respondent obtained a total dosage of 6 mgs of Dilaudid for administration to Patient #9. Respondent failed to account for the 6 mgs of Morphine in any hospital, patient, or other record.

///

1 j. **Patient #10.** On or about February 8, 2004, at approximately 0718
2 hours, 0916 hours, 1150 hours, 1447 hours, 1510 hours, 1626 hours, 1659 hours, and 1906 hours,
3 Respondent obtained a total dosage of 55 mgs of Morphine for administration to Patient #10. At
4 approximately 0722 hours and 1706 hours, Respondent obtained 10mgs of Oxazepam each time
5 for administration to Patient #10. Respondent failed to account for 47 mgs of the Morphine and
6 20 mgs of the Oxazepam in any hospital, patient, or other record.

7 k. **Patient #11.** On or about February 10, 2004, at approximately
8 0926 hours, 1113 hours, Respondent obtained 5 mgs of Morphine each time for administration to
9 Patient #11. At approximately 1157 hours, Respondent obtained a 20 mg dose of Hydrocodone
10 (Norco) for administration to Patient #11. Respondent failed to account for 6 mgs of Morphine
11 and the 20 mgs of Hydrocodone (Norco) in any hospital, patient, or other record.

12 l. **Patient #12.** On or about February 10, 2004, at approximately 1114
13 hours, 1421 hours, and 1751 hours, Respondent obtained 5 mgs of Morphine each time for
14 administration to Patient #12. Respondent failed to account for 9 mgs of the Morphine in any
15 hospital, patient, or other record.

16 m. **Patient #13.** On or about February 10, 2004, at approximately
17 1234 hours, Respondent obtained a 5 mgs dose of Morphine for administration to Patient #13.
18 Respondent failed to account for 2 mgs of the Morphine in any hospital, patient, or other record.

19 n. **Patient #14.** On or about February 10, 2004, at approximately
20 1423 hours, Respondent obtained a 5 mgs dose of Morphine for administration to Patient #14.
21 Respondent failed to account for 2 mgs of the Morphine in any hospital, patient, or other record.

22 o. **Patient #15.** On or about February 10, 2004, at approximately 0736
23 hours, 0856 hours, 1113 hours, and 1420 hours, Respondent obtained 5 mgs of Morphine each
24 time for administration to Patient #15. At approximately 0956 hours, without a physician's
25 order to do so, Respondent obtained 4 mgs of Dilaudid for administration to Patient #15.
26 Respondent failed to account for 9 mgs of the Morphine and 4 mgs of Dilaudid in any hospital,
27 patient, or other record.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2

3
4
5
6
7

8

0

111

12
1314
1516
17

18

10

20
21

22
23
24

25
26
27

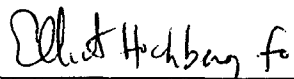
29

1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing the Board issue a decision:

- 4 1. Revoking or suspending Registered Nurse License Number 600850,
5 issued to Jennifer Christine Whitney;
6 2. Ordering Jennifer Christine Whitney to pay the reasonable costs incurred
7 by the Board in the investigation and enforcement of this case pursuant to Code section 125.3;
8 and,
9 3. Taking such other and further action as deemed necessary and proper.

10
11 **DATED:** 10/23/07
12

13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant
20
21
22
23

24 03579110-SD2007800384
25 80162541.wpd
26 rjt 05/24/07
27
28